

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SYMENS CONSULTING, INC.,
d/b/a RAINMAKER GROUP
2740 Cory Avenue
Akron, Ohio 44314

Case No.

Plaintiff

Judge:

v.

TERADATA CORPORATION
10000 Innovation Drive
Dayton, Ohio 45342

Defendant

COMPLAINT

Now comes Plaintiff, Symens Consulting, Inc. (“Symens”), and for its Complaint against Defendant, Teradata Corporation (“Teradata”) and states as follows:

JURISDICTION AND VENUE

1. This is an action seeking preliminary and permanent injunctive relief and an accounting for trademark infringement under 15 U.S.C. §1114(1) and/or false designation of origin under 15 U.S.C. §1125(a).

2. This Court has subject matter jurisdiction under 28 U.S.C. §1331.

3. Venue is proper in this Court under 28 U.S.C. §1391 (b)(2).

THE PARTIES

4. Symens is a corporation duly organized and existing under the laws of the State of Ohio, having its principal place of business at 2740 Cory Avenue, Akron, Ohio 44314.

5. Symens conducts business under the name “Rainmaker Group.”

6. Symens is engaged in the sale of consultation services with respect to data warehousing assessment, data warehouse engineering, point of sale data analysis and merchandising assistance.

7. Symens is the owner of U.S. Registration No. 3,523,285 for the service mark “ACCELERATED ANALYTICS” as used in connection with its sale of consultation services for data compiling and analyzing in the field of retail sales, stating a date of first use in interstate commerce of July 31, 2006. (See Exhibit 1).

8. Symens has continually used the trademark “ACCELERATED ANALYTICS” for the services stated in the registration since July 31, 2006.

9. Upon information and belief, Defendant Teradata Corporation (“Teradata”) is a corporation duly organized and existing under the laws of the state of Delaware, having its principal place of business at 10000 Innovation Drive, Dayton, Ohio 45342.

10. Upon information and belief, CT Corporation System, is the registered agent for service of process of Teradata, and its address is 1300 East 9th Street, Cleveland, Ohio 44114.

11. Upon information and belief, Teradata is engaged in the sale of consultation services with respect to data warehousing and enterprise analytics, including data compiling and analyzing in the field of retail sales.

12. Upon information and belief, Teradata is using the mark “ACCELERATED ANALYTICS” in connection with its sales of consultation services. (See Exhibit 2).

13. Teradata’s use of the mark “ACCELERATED ANALYTICS” is without the consent of Symens.

COUNT I—TRADEMARK INFRINGEMENT UNDER 15 U.S.C. §1114(1)

14. Symens repeats its allegations set forth in Paragraphs 1 through 13 as if fully rewritten.

15. Upon information and belief, Teradata's use of the mark "ACCELERATED ANALYTICS" in commerce, in this judicial district and elsewhere in the sale, offering for sale and advertising of its consultation services, without the consent of Symens, is likely to cause confusion, cause mistake, or to deceive in violation of 15 U.S.C. §1114(1), to the damage of Symens.

16. Upon information and belief, unless enjoined by this Court, Teradata will continue to use the mark "ACCELERATED ANALYTICS," and Symens will continue to be greatly and irreparably damaged.

17. Symens is without an adequate remedy at law.

18. Upon information and belief, the use by Teradata of the federally registered mark "ACCELERATED ANALYTICS" is with the knowledge of Symens' ownership, federal registration and prior use of the mark.

COUNT II—FALSE DESIGNATION OF ORIGIN UNDER 15 U.S.C. §1125(a)

19. Symens repeats its allegations set forth in Paragraphs 1 through 18 as if fully rewritten.

20. Upon information and belief, Teradata's promotion and sale of its consultation services through use of the mark "ACCELERATED ANALYTICS" in this judicial district and elsewhere, without the consent of Symens, in connection with substantially similar services,

offered in substantially similar channels of trade, and to the same purchasers of the services for which Symens uses its “ACCELERATED ANALYTICS” mark, is likely to cause confusion, mistake, or to deceive as to an affiliation, connection, or association of Teradata with Symens, or as to the origin, sponsorship or approval of Teradata’s services by Symens among ordinary purchasers, in violation of 15 U.S.C. §1125(a), to Symens’ great and irreparable damage.

21. Upon information and belief, unless enjoined by this Court, Symens will continue to be irreparably damaged by Teradata’s use of the mark “ACCELERATED ANALYTICS.”

22. Symens is without an adequate remedy at law.

23. Upon information and belief, the use by Teradata of Symens’ “ACCELERATED ANALYTICS” mark is with the knowledge of Symens’ rights in and to the mark “ACCELERATED ANALYTICS.”

WHEREFORE, Symens seeks:

A. A finding that Teradata has infringed the trademark rights of Symens in violation of 15 U.S.C. §1114(1);

B. A finding that by using Symens’ “ACCELERATED ANALYTICS” mark, Teradata has and is using a false designation of origin or false or misleading description of fact or misleading representation of fact in violation of 15 U.S.C. §1125(a)(1);

C. Preliminary injunctive relief during the pendency of this action enjoining and restraining Teradata, its principals, subsidiaries, agents and employees, from the acts and conduct set forth above;

D. Permanent injunctive relief enjoining Teradata from using Symens’ “ACCELERATED ANALYTICS” mark, or anything confusingly similar thereto, in connection with the promotion or sale of consultation services, including but not exclusively using Symens’

“ACCELERATED ANALYTICS” mark, or anything confusingly similar thereto, as a metatag to promote sales on its website, and/or otherwise engaging in acts or conduct that is likely to cause confusion, to cause mistake or to deceive the purchasing public as to the origin or sponsorship or approval of Teradata’s consultation services or an association, affiliation or other relationship between Teradata and Symens;

E. Delivery by Teradata to Symens of all advertising materials bearing the “ACCELERATED ANALYTICS” mark for destruction pursuant to 15 U.S.C. §1118;

F. An accounting of all profits from Teradata’s sales of the consultation services in connection with which it used the “ACCELERATED ANALYTICS” mark;

I. Actual damages;

J. A finding that the actions of Teradata were willful and/or in bad faith infringing Symens’ rights;

K. Treble damages;

L. A finding that this is an exceptional case under 15 U.S.C. §1117(a) and an award of reasonable attorney fees;

M. Costs; and

N. Such other and further relief as to which this Court may find Symens entitled under the law or in equity.

JURY DEMAND

Symens demands a jury as to those issues raised herein to which a jury may be had as a matter of law.

Respectfully submitted,

/s/

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